

Remarks

Claims 19-27 are pending in this application. No claims have been added, canceled or amended. Thus, claims 19-27 remain subject to continued examination.

Anticipation Rejection

Claims 19-27 stand rejected under 35 U.S.C. 102(e) as being anticipated by Morin et al. (US 6,481,153). Applicants respectfully note that MPEP § 2131 specifically states that "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The Office Action acknowledges that Morin et al. is silent with respect to the currently claimed x-ray scattering peak of 0.4 degrees or lower. In order to address this fact the Office Action concludes that this property is inherent to the invention in Morin et al.. Reconsideration of this position is respectfully requested.

In order to support an anticipation rejection on grounds of inherency the Office Action must present evidence which makes clear that the missing matter is necessarily present in the thing described in the reference and that it would be so recognized by persons of ordinary skill. See, MPEP Section 2131.01(III). The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.

MPEP Section 2112 citing *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999).

Applicants respectfully submit that this burden of proof has not been satisfied. The Examiner has relied exclusively upon the use of like materials to support the conclusion of inherency in Morin et al. However, this ignores any effect that thermal treatment may have on the claimed properties.

As stated page 15, line 20 through page 16, line 1, of the current specification, the scattering peak character is achieved by the nucleating additive used in conjunction with a thermal treatment. Thus, Applicants respectfully submit that the claimed character would not necessarily be present unless the same materials and thermal treatments were used.

In light of the fact that the Office Action has not met the burden of proof to establish inherency it is respectfully submitted that the outstanding 102(e) rejection cannot be maintained. Thus, reconsideration and withdrawal of the outstanding anticipation rejection is requested.

Obviousness Rejections

Claims 19-27 stand rejected under 35 USC 103(a) as being obvious over U.S. Patent 4,560,734 to Fujishita et al. in view of U.S. Patent 5,798,167 to Conner et al. Continued rejection on this basis is respectfully traversed and reconsideration is requested.

A fundamental requirement of establishing an obviousness rejection is that the prior art relied upon must teach or suggest all limitations. In the present case this requirement does not appear to be met. The Office Action appears to take the position that the combination of Fujishita et al. and Conner would automatically

meet the claimed scattering peak limitations. However, as pointed out above, the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. MPEP Section 2112 citing *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999).

As stated at page 15, line 20 through page 16, line 1, of the current specification, the scattering peak character is achieved by the nucleating additive used in conjunction with a thermal treatment. In the enabling examples provided in the present application the thermal treatment used was quenching at approximately room temperature followed by heating. As best understood, in Fujishita even if quenching is used, it is at a relatively high temperature. Thus, even if the teachings of the references were combined, the claimed scattering peak limitations would not necessarily result. Therefore, it is respectfully submitted that the conclusion of inherency cannot be maintained.

Conclusion:

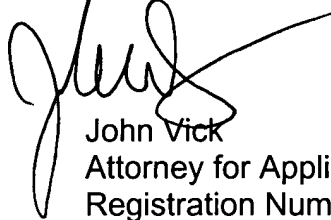
In light of the above arguments it is respectfully submitted that the art of record does not establish a *prima facie* case of anticipation or obviousness. Thus, it is submitted that all claims presently stand in condition for allowance and an action to that effect is requested at this time.

To any extent required, a request for an extension of time is hereby made. Authorization is provided to deduct any fees required for acceptance of this paper (including any extension fees) from Deposit Account 04-500.

Should any issues remain after consideration of this Amendment, the Examiner is invited and encouraged to telephone the undersigned in the hope that such issue may be resolved in an expedient manner.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John Vick', with a long horizontal flourish extending to the right.

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